

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL JOHNSON,
Petitioner,

vs

WARDEN, PICKAWAY
CORRECTIONAL INSTITUTION,
Respondent.

Case No. 1:08-cv-286

Barrett, J.
Hogan, M.J.

REPORT AND RECOMMENDATION

This habeas corpus action brought pro se pursuant to 28 U.S.C. § 2254 is before the Court on petitioner's motion to withdraw his petition without prejudice. (Doc. 12). Petitioner requests that his habeas petition be withdrawn so that he may exhaust his state court remedies. (*See id.*).

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, provides: "The Federal Rules of Civil Procedure, to the extent they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules." Rule 41(a)(2), Fed. R. Civ. P., provides that the Court may dismiss an action "at the plaintiff's instance" upon "such terms and conditions as the court deems proper."

Pursuant to Fed. R. Civ. P. 41(a)(2), this Court **RECOMMENDS** that petitioner's motion to withdraw his petition (Doc. 12) be **GRANTED**, and that the petition for writ of habeas corpus filed under 28 U.S.C. § 2254 (Doc. 2) be **DISMISSED** without prejudice.

Date: 10/16/08


Timothy S. Hogan
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MICHAEL JOHNSON,
Petitioner,

vs

Case No. 1:08-cv-286

Barrett, J.
Hogan, M.J.

WARDEN, PICKAWAY
CORRECTIONAL INSTITUTION,
Respondent

NOTICE

Attached hereto is a Report and Recommendation issued by the Honorable Timothy S. Hogan, United States Magistrate Judge, in the above-entitled habeas corpus action. Pursuant to Fed. R. Civ. P. 72(b), which may be applied in this action under Rules 1 and 11 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, any party may object to the Magistrate Judge's Report and Recommendation within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court and serve on all other parties written objections to the Report and Recommendation, specifically identifying the portion(s) of the proposed findings, recommendations, or report objected to, together with a memorandum of law setting forth the basis for such objection(s). Any response by an opposing party to the written objections shall be filed within ten (10) days after the opposing party has been served with the objections. *See* Fed. R. Civ. P. 72(b). A party's failure to make objections in accordance with the procedure outlined above may result in a forfeiture of his rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Johnson
428-229
Pickaway Corr. Inst.
PO Box 209
Orient, OH 43146

2. Article Number

(Transfer from service label)

7007 0710 0000 8134 9748

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

1:08cv286 (Dec. 13)